UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION DOCKET NO. 3:15-cv-00333-MOC

REGINALD ANTHONY HUNTER,)	
D 11)	
Petitioner,)	
Vs.)	ORDER
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

THIS MATTER is before the court on petitioner's Motion for Leave to File Supplemental Pleading. The government opposes such motion in its Responsive pleading.

In such motion, petitioner seeks leave to add an additional claim of ineffective assistance of counsel based on counsel's failure to object to his being charged under 18 U.S.C. § 924(c)(1)(A) and the application of the career offender enhancement under U.S.S.G. § 4B1.1. Having considered such proposed amendments under Rule 15, Federal Rules of Civil Procedure, the court finds them to be meritless. In particular, petitioner contends that the sentencing enhancement he received for using a gun during a bank robbery was unlawful based on the Supreme Court's decision in Johnson v. United States, 135 S. Ct. 2551 (2015) (invalidating the *residual clause* of the Armed Career Criminal Act as unconstitutionally vague) and on a letter from the Community Defender encouraging him to pursue such claim under a theory that armed bank robbery does not qualify under the ACCA in light of Johnson. Petitioner and the Community Defender are flatly wrong as the federal offense of armed bank robbery does not fall under the residual clause of the ACCA, but is instead an enumerated offense. Petitioner was charged with violating § 2113(d) in

that he used a dangerous weapon during a bank robbery. This court has previously held that such a charge is clearly delineated by the ACCA. See <u>United States v. Strong</u>, 2015 WL 6394237 (W.D.N.C. 2015) (holding there was no <u>Johnson</u> issue where the § 924(c) charge was based on an armed bank robbery). Under the Guidelines, armed robbery is an enumerated crime of violence, thus there is no vagueness issue. See § 4B1.2 comment. n.1. The court concludes that amendment would not be appropriate as the proposed claims are without merit. Having considered petitioner's motion and reviewed the pleadings, the court enters the following Order.

ORDER

IT IS, THEREFORE, ORDERED that petitioner's Motion for Leave to File Supplemental Pleading (#14) is **DENIED**.

Signed: January 5, 2016

Max O. Cogburn Jr

United States District Judge